

MEMORANDUM

February 16, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: JACK M. SCHULER, ESQ.
Schuler & Brown

OWEN L. GALLAGHER
Principal Deputy County Counsel
General Litigation Division

RE: The Estate of Phillip Fong v. County of Los Angeles
Los Angeles Superior Court, Northeast District Case No. GC032039

DATE OF
INCIDENT: July 3, 2000, through February 13, 2001

AUTHORITY
REQUESTED: \$424,000


COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

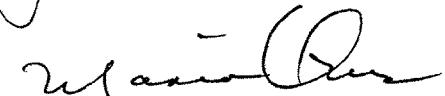
☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on March 7, 2005

SUMMARY

This is a recommendation to settle for \$424,000, the medical negligence lawsuit, originally brought by Phillip Fong, now the Estate of Phillip Fong, as the result of treatment Phillip Fong received at LAC+USC Medical Center from July 3, 2000, through February 13, 2001. There is no Medi-Cal lien. The heir of Phillip Fong, Michelle Fong (minor daughter), also has a claim for wrongful death, which will also be resolved by this settlement.

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On June 30, 2000, Phillip Fong, a 46-year-old man, underwent a pre-employment physical examination at LAC+USC Medical Center in anticipation of being hired as a Physician's Assistant in the Department of Emergency Medicine. As part of the physical examination, an x-ray was taken of Mr. Fong's chest.

On July 3, 2000, a radiologist at LAC+USC Medical Center reviewed the results of the x-ray taken of Mr. Fong's chest, and noted an abnormal nodule on Mr. Fong's left lung, which the radiologist suspected might be a malignant tumor. A significant risk of malignant tumors is that the cancer cells may migrate, and be transported through the body to other organs (metastasis). Although the final report on Mr. Fong's chest x-ray recommended that a comparison be made with previous x-rays taken of Mr. Fong's chest, if any, or, in the alternative, that an imaging study generated by computer synthesis of x-ray data (CT scan) be performed to eliminate the possibility that the abnormal nodule might be cancerous, the final report was not read by medical personnel in the Employment Health Services (EHS) Clinic. As a result, Mr. Fong was not informed of the existence of the abnormal nodule on his left lung, and no follow-up examination was scheduled.

On July 10, 2000, Phillip Fong was cleared by the EHS physician for work, despite the abnormal chest x-ray results, and on July 15, 2000, Mr. Fong began working for the County as a Physician's Assistant at LAC+USC Medical Center.

In February 2001, EHS personnel reviewed Phillip Fong's medical record, and read the report of Mr. Fong's chest x-ray indicating that there was an abnormal nodule on the left lung. However, Mr. Fong was not informed of the results of the chest x-ray.

On December 4, 2002, Phillip Fong was seen at Kaiser Hospital (private facility) with complaints of dizziness. He was diagnosed as suffering from cancer of the brain, which had metastasized from his lung.

Phillip Fong underwent chemotherapy and radiation therapy. However, his condition continued to deteriorate. On July 13, 2004, Mr. Fong died of complications of metastatic lung cancer.

DAMAGES

If this matter proceeds to trial, the claimants will likely seek the following:

Estate of Phillip Fong,	
Loss of Past Earnings	\$184,000
Michelle Fong,	
Loss of Future Support	\$100,000
Loss of Care, Comfort	
and Companionship (MICRA limit)	<u>\$250,000</u>
TOTAL	\$534,000

The proposed settlement includes:

Estate of Phillip Fong,	
Cash Settlement	\$171,083
Michelle Fong,	
Cash Settlement	\$124,000
Attorneys Fees (MICRA Estimate)	\$113,917
Costs of Litigation	<u>\$ 15,000</u>
TOTAL	\$424,000

A portion of the recommended settlement may be directed by claimants to be used to purchase an annuity. The amount and structure of the annuity has not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

Expenses incurred by the County of Los Angeles in the defense of this case through February 8, 2005, are attorneys fees of \$55,584 and \$13,571 in costs.

Originally, Phillip Fong brought a personal injury lawsuit against the County. During the pendency of that matter, Mr. Fong and the County agreed to recommend a settlement in the amount requested here. However, before the

settlement could be approved, Mr. Fong died, and his Estate has been substituted into the case to recover the value of the proposed settlement relating to past earnings. Because of Mr. Fong's death, his heirs have a potential cause of action for wrongful death, which is also being resolved by this settlement.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$424,000
County Attorneys Fees and Costs	<u>\$ 69,155</u>
TOTAL	\$493,155

EVALUATION

Medical experts will be critical of the failure of medical personnel to inform Phillip Fong of the results of his chest x-ray indicating an abnormal nodule on his left lung, and their failure to schedule a follow-up examination to eliminate the possibility that the abnormal nodule might be cancerous. These failures resulted in a missed opportunity to make an early diagnosis of Phillip Fong's lung cancer, allowed the cancer to progress and metastasize, and are directly responsible for the results observed here.

We join with our private counsel, Schuler & Brown, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$424,000.

The Department of Health Services concurs in this settlement.